Filed 6/17/16 In re Clayton C. CA5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FIFTH APPELLATE DISTRICT**

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| In re CLAYTON C., a Person Coming Under the Juvenile Court Law. | |
| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>CLAYTON C.,<br><br>Defendant and Appellant. | F072474<br><br>(Super. Ct. No. 513791)<br><br>**OPINION** |

**THE COURT**[*]

APPEAL from an order of the Superior Court of Stanislaus County. Valli K. Israels, Judge.

Randall H. Conner, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Kathleen A. McKenna and Nora S. Weyl, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Gomes, Acting P.J., Kane, J. and Detjen, J.

Appellant Clayton C., a minor, appeals from the juvenile court's dispositional order committing him to the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (DJJ)[1] following his admissions to the crimes of robbery (Pen. Code, § 211) and attempted robbery (Pen. Code, §§ 211, 664) in response to a petition filed under Welfare and Institutions Code section 602. Appellant contends his commitment to the DJJ was an abuse of discretion because substantial evidence failed to show a benefit from the commitment and that less restrictive alternatives would be ineffective or inappropriate. For the reasons set forth below, we reverse and remand for additional proceedings consistent with this opinion.

## FACTUAL AND PROCEDURAL BACKGROUND

*Appellant's Prior Petition*

On November 18, 2014, a wardship petition was filed in Alameda County alleging appellant had committed robbery and possessed marijuana for sale. On November 26, 2014, in exchange for dismissing the robbery count, appellant admitted to possessing marijuana for sale. Appellant's case was then transferred to Stanislaus County, as appellant lived in Turlock with his father, for disposition. Appellant remained in custody from his arrest on November 15, 2014, through his disposition on December 23, 2014, a total of 39 days. During that time, appellant's counsel argued he received no probation services.

At appellant's disposition, the juvenile court adjudged the minor a ward of the court and placed him on probation pursuant to Welfare and Institutions Code section 725, subdivision (b), despite a recommendation from the probation officer that appellant be

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[1] The parties generally refer to the agency identified for appellant's commitment as the Division of Juvenile Facilities (DJF). The juvenile court and its records refer to the commitment agency as the DJJ. While the DJF is the formal name for what was previously known as the Youth Authority, it is a part of the DJJ and thus both references are appropriate. We will refer to the agency as the DJJ.

placed on informal probation pursuant to Welfare and Institutions Code section 725, subdivision (a). Appellant was committed to juvenile hall for 39 days, but given 39 days' credit for his predispositional time in detention. Accordingly, appellant was released upon disposition.

With respect to appellant's conduct supporting the admission, appellant and a co-conspirator approached the victim and offered to sell him marijuana. When the victim refused, appellant took the victim's wallet, removed $250 from it, and fled. Appellant was later apprehended in possession of a stack of money in his pocket and 31.8 grams of marijuana in his sweatshirt. The victim knew appellant from their time attending high school together.

*Appellant's Current Petition*

On July 22, 2015, appellant's current petition was filed in Stanislaus County. This petition alleged appellant committed two counts of robbery, one count of attempted robbery, and one count of battery with serious bodily injury. Appellant admitted to one count of robbery and one count of attempted robbery. In exchange, the remaining counts were dismissed.

The detention report shows that on July 21, 2015, around 12:35 a.m., appellant and at least two others were driving around in a white Toyota when they noticed a man and a woman sitting in Donnelly Park. The group exited the car, each wearing hooded sweatshirts pulled over their heads. They attacked the man, tackling him and punching him, before taking his car keys and a pair of red, white, and blue prescription sunglasses. They also attempted to take the woman's cell phone, but she was able to repel the attempt. The group then fled.

A short while later, three men attacked another victim while he was walking home from work. They body slammed him to the ground and began hitting and kicking him. One blow struck the victim in the mouth, loosening his teeth and causing his mouth to bleed. The attackers took the victim's headphones, hat, and backpack, which contained

the victim's wallet, ATM card, identification, and a Game Boy. Once again, the attacker's fled.

Appellant and two others were ultimately located by the police at appellant's home, where they were identified as the persons involved in the attacks. The first male victim's prescription glasses were found in a car belonging to one of appellant's associates, and the victim's car keys were found in bushes outside of appellant's house. More of the stolen property and multiple grey and black hooded sweatshirts were found in appellant's room. Appellant's admissions covered the attempt to take the woman's cell phone and the later attack on the man walking home from work.

*The Probation Officer's Report and Contested Disposition*

Following appellant's admission, a dispositional social study (hereafter the Probation Officer's Report) was prepared. The Probation Officer's Report provided a detailed accounting of the current crime, appellant's past criminal conduct, and the criminal conduct of members of appellant's family. It also contained statements from the victims, appellant, and appellant's father.

Appellant generally laid blame for the robberies on his associates and denied striking any of the victims. Appellant's father stated appellant had trouble with curfew rules and would leave when disciplined. He believed appellant was influenced by bad friends, but thought a commitment to juvenile hall would be beneficial. Although contested at the hearing, the Probation Officer's Report noted that appellant's father said a group home would not be an appropriate placement because appellant "will run away if given a chance."

The Probation Officer's Report explained that appellant was previously declared a ward of the court, but had no probation violations. It found multiple aggravating factors, but no factors in mitigation. There was no discussion of dispositional options, such as foster homes, juvenile hall, or the DJJ, and no mention of services needed by appellant or offered by any potential dispositional options.

In the Probation Officer's Report summary and evaluation, it was noted that "[p]lacement was considered but was found not to be a viable option due to the level of violence and seriousness of the offense." The Probation Officer's Report also contained impressions regarding appellant's pattern of escalating violence, level of criminal sophistication, refusal to take responsibility for his actions, and threat to the community, among others. Ultimately, it recommended a commitment to the DJJ for a maximum term of 74 months.

Appellant contested this recommendation at his dispositional hearing on September 11, 2015. The sole witness called at that hearing was the probation officer, Bianca Ceja. As noted in greater detail in the following discussion, the probation officer described her investigation, conclusions, and ultimate recommendation. When questioned, the probation officer maintained her recommendation was appropriate. Appellant also introduced two pieces of evidence, an award for academic success in juvenile hall and a letter of apology to one of his victims. Following argument from counsel and remarks from appellant's father, the juvenile court took the matter under submission.

On September 21, 2015, the juvenile court pronounced appellant's disposition. The juvenile court provided a detailed recitation of the facts underlying both the current petition, as well as the prior petition, and discussed its consideration of the various facts that had been presented at the contested hearing. The juvenile court recognized appellant's father would prefer a commitment to juvenile hall and noted it had been encouraged by appellant's recent behavior. However, believing that appellant had previously been committed to juvenile hall, only to quickly reoffend, and in light of the violent nature of appellant's recent conduct, the juvenile court committed appellant to the DJJ.

The juvenile court explained it had "examined the possibility of placement for this minor. However, due to the level of violence and seriousness of the offenses, most

placement facilities will not accept minors with violent offenses. Also, Dad says a foster home won't work because the minor will run. Foster homes and placement facilities are not locked facilities. Hence, the Court feels that placement is not appropriate, and the reformatory efforts of probation in juvenile hall have not succeeded." The juvenile court also found that appellant's "mental and physical condition render it probable that the minor will benefit from the reformatory, educational, and other treatment resources provided by DJJ." Appellant was committed for a maximum term of 24 months. This appeal timely followed.

## DISCUSSION

Appellant argues the juvenile court abused its discretion when it committed appellant to the DJJ due to a lack of supporting evidence.

***Standard of Review and Applicable Law***

"We review a juvenile court's commitment decision for abuse of discretion, indulging all reasonable inferences to support its decision." (*In re Antoine D.* (2006) 137 Cal.App.4th 1314, 1320.)

Commitment to the DJJ will be upheld "where the evidence demonstrates a probable benefit to the minor from the commitment and less restrictive alternatives would be ineffective or inappropriate." (*In re M.S.* (2009) 174 Cal.App.4th 1241, 1250.) " ' "In determining whether there was substantial evidence to support the commitment, we must examine the record presented at the disposition hearing in light of the purposes of the Juvenile Court Law." ' " (*In re Oscar A.* (2013) 217 Cal.App.4th 750, 756.) The juvenile court need not make explicit findings on the record, provided substantial evidence in the record supports its disposition, although the absence of such a statement makes appellate review more difficult. (*In re Ricky H.* (1981) 30 Cal.3d 176, 184.)

"One of the primary objectives of juvenile court law is rehabilitation, and the statutory scheme contemplates a progressively more restrictive and punitive series of dispositions starting with home placement under supervision, and progressing to foster

home placement, placement in a local treatment facility, and finally placement at the DJJ." (*In re M.S., supra*, 174 Cal.App.4th at p. 1250.) In following the statutory scheme, however, "the court has broad discretion to choose probation and/or various forms of custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public." (*In re Eddie M.* (2003) 31 Cal.4th 480, 507.) Thus, there is no requirement to proceed from the least restrictive to the most restrictive placement, and a court does not necessarily abuse its discretion if it orders the most restrictive placement first. (*Ibid.*)

***The Present Record Is Insufficient to Support a Commitment to the DJJ***

Appellant argues insufficient evidence supports both analyses required to commit him to the DJJ: (1) that appellant will benefit from the commitment; and (2) that less restrictive alternatives will be ineffective or inappropriate. While we find substantial evidence supports the conclusion appellant will benefit from commitment to the DJJ, we agree that the present record is insufficient to support the conclusion that less restrictive alternatives would be ineffective or inappropriate.

*There Is a Probable Benefit to Commitment to the DJJ*

The juvenile court determined that appellant's "mental and physical condition render it probable that [he] will benefit from the reformatory, educational, and other treatment resources provided by DJJ." Appellant contends this conclusion is only supported by the record if the alleged benefit to commitment is "incarceration to prevent another offense"; an allegedly improper basis for commitment. We disagree.

As detailed in the Probation Officer's Report, testimony from the probation officer, and the juvenile court's oral disposition, the record demonstrates that appellant had moved from apparently nonviolent conduct against a known associate in the context of a drug sale to random acts of violence against unknown and unsuspecting members of the public with no discernable motivation other than the commission of a robbery. Furthermore, the record demonstrates a lack of remorse by appellant. According to the

probation officer, despite the seriousness of appellant's conduct, he appeared to deflect responsibility from himself to others, and appeared to be concerned only with the length of his commitment, which he believed would be minimal. Finally, the record contains evidence that appellant poses a flight risk when disciplined. Appellant indicated he left his father's home on the night he participated in these violent robberies, despite being told to get some sleep, because he felt he had to clear his head. And appellant's father indicated that appellant responds to discipline by leaving the home and that appellant might run away if placed in a group home.

The escalation in violence and the randomness of appellant's recent attacks shows a threat to public safety above and beyond the mere risk that another crime will be committed. Commitment in a secure facility such as the DJJ would assist in appellant's rehabilitation by placing him in a location which impresses upon him the seriousness of his conduct and which prevents appellant from flight. Substantial evidence thus shows a benefit to appellant from a secure setting. (See *In re Asean D.* (1993) 14 Cal.App.4th 467, 473 [failure to take responsibility a relevant factor in determining minor was "a serious danger to the public unless securely confined"]; *In re Michael D.* (1987) 188 Cal.App.3d 1392, 1396-1397 [explaining that changes to the juvenile law permit "greater emphasis on punishment for rehabilitative purposes and on a restrictive commitment as a means of protecting the public safety" before concluding that minor involved in particularly violent crime could require immediate commitment to the DJJ, even if he merely aided in the crime by not assisting the victim, in part due to "unrepentant and cavalier attitude following his detention and arrest"].)

Although we agree with appellant that he is not in the same position as the minor in *In re Jonathan T.* (2008) 166 Cal.App.4th 474, and recognize that no evidence was presented regarding potential benefits from programs available at the DJJ,[2] we find the

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[2] The probation officer admitted that she was "not really familiar with the in's and out's of what they have," other than the fact that the DJJ has "numerous programs,

analysis in that case persuasive. Here, as in *Jonathan T.*, appellant will "benefit from commitment to DJJ, in part, because it will provide him with a secure environment. In other words, it is not merely the programs at DJJ which provide a benefit to minor, but the secure setting as well." (*Id.* at p. 486.)

*The Record Lacks Substantial Evidence on Less Restrictive Alternatives*

Having resolved that there is a probable benefit to commitment at the DJJ, we turn to the second prong, whether less restrictive alternatives would be ineffective or inappropriate. Appellant does not contest that less restrictive alternatives to the DJJ were raised before the court, considered, and rejected. Instead, appellant argues commitment to the Stanislaus County Juvenile Commitment Facility (JCF) was either not considered or, if considered, was improperly rejected because no evidence showed the commitment would be inappropriate or ineffective. On this last point, we agree. Although the record is sufficient to infer the juvenile court considered and rejected the JCF on grounds that it would be ineffective, the present record lacks substantial evidence to support this conclusion.

Initially, we conclude the record supports a reasonable inference that commitment at the JCF was considered, but rejected. Although not mentioned in the Probation Officer's Report, appellant's counsel raised the prospect of committing appellant to the JCF during the contested disposition hearing on September 11, 2015. During examination of the probation officer, appellant's counsel confirmed that commitment to the JCF was an available option and that other youth were confined there for similar crimes. Later, appellant's counsel expressly argued that commitment at the JCF appeared likely to benefit appellant, while noting that the probation officer had not investigated this possibility. In response, the juvenile court questioned counsel regarding why he would

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numerous assessments that they have the minors complete within their first 45 days of their commitment there."

propose the JCF over placement. Finally, when pronouncing appellant's disposition, the juvenile court recognized that commitment to juvenile hall had been requested, although this request was attributed to appellant's father. Although the juvenile court did not expressly reject commitment to the JCF, this record is sufficient to support the inference that the JCF commitment was considered and, thus, was rejected. (*In re Ricky H., supra*, 30 Cal.3d at pp. 183-184 ["This court cannot assume that the superior court judge, who presided over the dispositional hearing and heard appellant's counsel's arguments, gave them no consideration or completely failed to evaluate appellant's suitability for the Youth Authority."].)

The record further supports the inference that the juvenile court rejected JCF on the conclusion that it would be ineffective. The juvenile court explained that, upon hearing of appellant's success in juvenile hall while waiting for disposition, it had reviewed the record of appellant's previous petition and found that appellant had made a statement of remorse and explanation for his criminal behavior in that case, which was in line with appellant's letter to the court and discussion with the probation officer in the present petition. Continuing this thought, the juvenile court stated that appellant "was given 39 days in Alameda Juvenile Hall and then released," only to be "charged with a second petition less than a year later after being charged in the first petition." For these reasons, and others related to the severity of appellant's conduct, the juvenile court found that "the reformatory efforts of probation in juvenile hall have not succeeded."

We conclude, however, that on the present record the juvenile court lacked substantial evidence to find commitment to the JCF would be ineffective. The Probation Officer's Report contained no discussion of the programs or confinement options available at the JCF, and thus provided no evidence regarding the potential effectiveness of those programs. Moreover, the probation officer admitted that she "didn't fully consider how [appellant] might benefit from services in the Juvenile Commitment Facility" because she did not "know what they are." The juvenile court recognized this

problem, stating "the Court was disappointed that the probation officer was unable to fully answer some of counsels' questions regarding consideration of placement and less restrictive alternatives in effecting the minor's rehabilitation," but proceeded with commitment to the DJJ based on the fact that appellant had previously served time in juvenile hall and yet reoffended.

Appellant's prior time in juvenile hall is not substantial evidence that commitment to the JCF would be ineffective for at least two reasons. First, the record evidence precludes an inference that appellant's prior commitment was equivalent to a JCF commitment. Contrary to the juvenile court's belief, appellant's 39-day commitment was not the result of a dispositional order imposed and served ahead of appellant's transfer.[3] Rather, appellant was confined for 39 days prior to disposition, time split between Alameda County, where he was arrested and admitted the prior petition, and Stanislaus County, where he was transferred and was awaiting disposition. Thus, appellant was in a predispositional hold and the record is devoid of any suggestion that appellant received rehabilitative or educational services while awaiting disposition. Indeed, the only note on the services provided is appellant's counsel's argument during disposition in Stanislaus County that appellant has "received no probation services."

Second, the record evidence precludes an inference that the JCF commitment would be ineffective because there is no explicit or implicit comparison between the programs and confinement options available during a predisposition juvenile hall commitment and those programs and confinement options available for minors serving longer-term commitments with the JCF. While it is possible these programs are substantially similar, with no record evidence on this point we are left to speculate as to the effectiveness of the JCF programs. Moreover, to the extent any evidence is in the

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[3] The juvenile court summarized appellant's prior commitment as follows: "He was given 39 days in Alameda Juvenile Hall and then released. He was transferred to Stanislaus county."

record regarding the effectiveness of programs offered by Stanislaus County in its secure juvenile facilities, all of that evidence shows appellant is amenable to local treatment. While confined awaiting disposition in Stanislaus County, appellant had no infractions in juvenile hall and received an award for his academic performance while confined. This conduct led the probation officer to admit that appellant appeared "to be doing well and making good use of the services available to him" in juvenile hall, and that there was "[n]o indication that he wouldn't continue to benefit from those services."

In opposition, the People focus on the juvenile court's statement that it "examined the possibility of placement for this minor" and "feels that placement is not appropriate." We do not disagree that the juvenile court considered placement inappropriate, nor do we take issue with the evidence presented which supports rejecting placement. But this does not correct the lack of evidence concerning the ineffectiveness of a JCF commitment.

The record is clear that placement, in the context of these proceedings, means placement in a nonsecure facility such as a foster home or group home. Appellant's counsel, the prosecutor, and the probation officer each expressly used the word "placement" to mean either foster home or group home services.[4] The juvenile court's pronouncement applied this same meaning, rejecting placement because most facilities would not accept a violent offender and because appellant might run from a nonsecure facility. Given the meaning of the term "placement", imposing a DJJ commitment because placement would be ineffective does not demonstrate that commitment to the JCF would also be ineffective.

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[4] Exemplary exchanges include the following: "Q. By 'placement,' I'm talking about group homes; right? A. Yes."; "Q. When you refer to 'foster home,' would that be the equivalent of what the probation department would refer to as 'placement'? A. Yes."; and "What prevents him - - if the Court were to send him to the camp or to this other program or to juvenile hall or to placement, …."

In determining substantial evidence does not support the juvenile court's decision to commit appellant to the DJJ, we do not hold that such a commitment could not be imposed in this case. As explained above, there is substantial evidence to conclude appellant would benefit from a commitment to the DJJ and there is no requirement that the juvenile court proceed through a linear progression of punishments. (*In re Eddie M.*, *supra*, 31 Cal.4th at p. 507.) However, in this case the Probation Officer's Report and subsequent testimony demonstrated a complete lack of investigation into alternative, less-restrictive, secure placements available to appellant through Stanislaus County. Coupled with the juvenile court's rejection of only nonsecure placements and the lack of evidence regarding rehabilitative services provided during appellant's prior predispositional confinement, the record presented to the juvenile court was insufficient to support commitment to the DJJ. Upon remand, evidence regarding the effectiveness or ineffectiveness of commitment to the JCF should be provided to the juvenile court to allow proper consideration of that less-restrictive alternative.

**DISPOSITION**

The judgment is reversed and this matter is remanded for further proceedings consistent with this opinion.